



Town of Harpswell
Board of Appeals Minutes
April 22, 2015
Adopted May 27, 2015

Members Present

Ned Simmons, Chair
Jim Knight
Ellen Lebauer
John Perry
Ellen Shillinglaw
Pat Lawson, Associate Member

Members Absent

Staff Present

Amy Tchao, Town Attorney
Diane Plourde, Recording Secretary

The Town of Harpswell Board of Appeals meeting, being duly advertised in the *Brunswick Times Record* was called to order at 6:30 p.m. by Ned Simmons, Chair. The chair read the agenda, introduced the board members and reviewed the procedures.

The Chair appointed Pat Lawson a full voting member for this meeting.

Old Business: A withdrawal letter was received from Jeffrey Smith regarding a variance application submitted October 2014 for a Setback Variance for Single Family Dwelling.

**Ned Simmons moved seconded by Ellen Lebauer to accept the withdrawal letter.
Motion carries 5-0**

15-02-02BA – Gerald E. Mitchell, Jr. (Applicant/Owner), Map 45 Lot 37, Pinkham Point Road, Harpswell – Hardship Variance

Tim Forrester from Eco Analyst, representing Gerald Mitchell spoke about the variance request. He said the lot is a lot of record, nonconforming and the relocation of Pinkham Point Road. He said the variance is for a small modest building of 22' x 24' foot building. Mr. Mitchell has tried to make the building conforming but due to the size of the land it has been difficult.

Mr. Simmons asked Mr. Mitchell about the reasonable return on the property. Discussion continued regarding the size of the lot, the proposed house and campers being put on the property in place of the stick built building.

William Wells said that if an RV vehicle was registered by the DOT, the vehicle can be parked on the property and does not have to meet the property setbacks. It can be on property all year, but as a campsite, only be occupied 120 days a year.

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John Cunningham appearing for Mrs. Hrubes, an abutter, agrees with the Board regarding the reasonable return and added that regarding #4 of the variance request, the hardship was created by the former owner of the land. That former landowner had moved the road which made the Mitchell land smaller.

Ned Simmons moved seconded by Ellen Lebauer that the land in question can yield a reasonable return and find against the applicant.

Motion carries 4-0 – Abstention 1

Ned Simmons moved seconded by John Perry that the property was divided in an odd circumstance and it is clear from the tax maps that the other lots in the neighborhood are similar configuration and the fact that the majority of the property is in the Shoreland Zone and moved in the applicants favor.

Motion carries 5-0

Ned Simmons moved seconded by Jim Knight that the neighborhood is of small lots with cottages well developed and it is clear that the proposal would not alter the essential character of the locality in the applicants favor.

Motion carries 5-0

Ned Simmons moved seconded by Ellen Lebauer that the hardship is not the result of action taken by the applicant or a prior owner in the applicants favor.

Motion carries 5-0

Ned Simmons moved seconded by John Perry to deny the applicants application based on the previous Findings of Fact and Conclusions of Law.

Motion carries 4-0 – Abstention 1

15-04-01BA – Jim Merryman (Applicant/Owner), Map 17 Lot 133, 242 Ash Point Road Harpswell – Request for Reconsideration of Variance Granted for Robert Graves, Map 17 Lot 131

The Chair noted that this Reconsideration request is for the approval of a variance from a previous meeting. He requested information from the Town Attorney relating to the issue of timeliness for reconsideration. The request was filed approximately fourteen (14) days after the decision, received on April 8, 2015 in the Code Office. The Chair asked the Town Attorney if they have discretion to extend that period for cause. The possible mitigation was that the applicant did not receive notice of the original variance request sent out by the Town Office.

Amy Tchao, Town Attorney spoke to the timing issue. A vote approving the variance was taken on February 25, 2015 and the Board added conditions to the variance on March 25, 2015. The request for reconsideration was received on April 8, 2015. Ms. Chao said the Board has good grounds under statutory language to deny the request due to the timeliness. Ms. Tchao read from the Basic Land Use Ordinance Section 12.3.1.4 that *“Failure of any*

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property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Board of Appeals". Even if Mr. Merryman didn't receive notice, it doesn't invalidate the decision of the Board.

Mr. Simmons said in order to take up the reconsideration one of the Board members who voted in the affirmative to grant the appeal would have to move to reconsider followed by a "second", and a vote from the majority of the Board to actually go forward with the reconsideration.

Attorney Paul Bulger, representing Reversing Falls LLC asked the Board to reconsider this issue. He reminded the Board it has the discretion to take additional testimony. Attorney Bulger also stated he plans to appeal to Superior Court if the Board did not reconsider. He added that neither Mr. Merryman, nor his wife or his assistant, no agent had received the legal notice of the appeal.

Attorney John Cunningham, representing Mr. Graves, reminded the Board that notice was published in the local newspaper and other abutters (that had also been mailed notices) did attend the site visit and the meeting.

Ned Simmons, Board Chair, moved that the Board take up the reconsideration. The motion failed for lack of a second. The Chair noted so for the record.

Other Business: Consideration of Minutes of March 25, 2015

Jim Knight moved seconded by Ellen Lebauer to accept the minutes of March 25, 2015 as presented. Motion carries 5-0

Adjournment: The meeting adjourned at 7:35 PM.

Respectfully submitted by:

Diane E. Plourde
Recording Secretary